IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5408 OF 2005

1. Rasul Suleman Mulla.
2. Almarabi Sikandar Mulla. ... Applicants

Versus.

The State of Maharashtra. ... Respondent.

Shri Amol Patankar for the Applicants.

Shri R.Y.Mirza, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 5th Sept., 2005.

P.C.:

1. Heard the learned Counsel for the Applicants and the learned A.P.P. for the State. The Applicants are Accused Nos.1 and 4 in the offence registered by the Shivaji Nagar Police Station, Kolhapur. Initially the Applicants were charged for the offences punishable under sections 307, 143, 147, 148, 149, 323 and 504 of the Indian Penal Code on the complaint made by the first informant, who is the daughter-in-law of the Applicant No.1 and sister-in- law of the Applicant No.2. The first informant died on 28th February 2005 and thereafter the accused were also charged with the offence punishable under section 302 of the IPC.

2. The deceased Mukhtar Begum who has filed the F.I.R. on 24th February 2005 has described the incident. The allegation against the Applicant No.2 is that she along

with the her son Javed caught hold of the deceased when her brother-in-law and the Applicant No.1 poured kerosene on her person and match stick was lighted by the Applicant No.1. Thereafter the Complainant started shouting and running away. She fell in a gutter. The incident occurred when the first informant was about to enter the common bath room for the purpose of taking bath. There is one dying declaration of the first informant on record. In the said dying declaration she has stated that the Applicant No.2 and her son Javed caught hold of her and her brother-in-law poured kerosene on her person and the Applicant No.1 lighted match stick.

3. The submission of the learned Counsel for the Applicants is that the Applicant No.1 is 79 years old and is suffering from cardiac ailments. Reliance is placed on a certificate dated 25th June 2005 of the Civil Surgeon, Kolhapur, in which the Civil Surgeon has certified that there is a risk to the life of the Applicant No.1 if immediate medical aid is not available to him. The learned Counsel submitted that the first informant is inconsistent while ascribing the role to the Applicants. He submitted that after completion of the investigation, charge sheet has been filed on 30th April 2005 and therefore, the custody of the Applicants need not be continued. The learned A.P.P. has submitted that considering the material on record no

case is made out for enlarging the Applicants on bail.

4. I have considered the submissions. It is not possible at this stage to accept that there is inconsistency in the two versions of the first informant on record. The first informant is consistent so far as the action of lighting the match stick by the Applicant No.1 is concerned. She is also very consistent with the role played by the Applicant No.2. The Applicant No.2 and her son caught hold of the first informant and the kerosene was poured on her person by the brother-in-law of the frist informant.

5. In so far as the Applicant No.1 is concerned, there is material on record to show his complicity in the offence. It is necessary to refer to the certificate issued by the Civil Surgeon, Kolhapur dated 25th June 2005. In the said certificate he has stated as under:

> . Rasul Suleman Mulla is 79 years old male examined at C.P.R.Hospital on 17/06/2005 to 23/06/2005.
>
> . He is a known case of Hypertensive Cardiomyopathy with left ventrcular dysfunction. He needs regular medical check up and treatment and further investigations.
>
> . His illness need to be evaluated regularly and he is quite old by age. Risk of life is there if immediate medical aid is not provided."

The age of the Applicant No.1 is certified to be 79 years. The Applicants are in custody from 24th February

2005. Considering his age and the ailment from which he is suffering and considering the fact that he is in custody for more than 6 months, a case is made out for enlarging the Applicant No.1 on bail.

6. The Applicant No.2 is a married woman having the age of 38 years. She is also in custody for last more than 6 months. The main allegation regarding the pouring of kerosene and lighting of match stick is against the Applicant No.1 and her husband. Shje is also in custody for last more than six months. The Applicant No.2 being a woman, considering the facts and circumstances of the case, is entitled to be enlarged on bail.

7. Hence the following order is passed:

(i) The Applicants shall be enlarged on bail in connection with C.R.No.13 of 2005 registered at Shivaji Nagar Police Station, Dist.Kolhapur, subject to furnishing a personal bond of Rs.15,000/- each with one or two local sureties in the like amount.

(ii) The Bail is granted subject to condition that till completion of trial the Applicants will report to the concerned Police Station once in a week.

(iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicants shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

Judge.